

SENATE BILL 2695

By Bowling

AN ACT to amend Tennessee Code Annotated, Title 68,
Chapter 11, relative to the use of electronic
monitoring devices in nursing homes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 11, Part 9, is amended by
adding the following section:

(a) As used in this section:

(1) "Electronic monitoring device" means a surveillance instrument with a
fixed position video camera or an audio recording device, or a combination
thereof, that is installed in a resident's room and broadcasts or records activities
or sounds occurring in the room;

(2) "Nursing home" has the same meaning as defined in § 68-11-201;

(3) "Resident" means an individual who resides in a nursing home; and

(4) "Sponsor" means a legal guardian or a legally appointed substitute
decision maker who is authorized to act on behalf of a resident.

(b)

(1) Except as provided in subsection (c), a resident or a resident's
sponsor may authorize, through the use of the application process described in
this section, the installation and use of an electronic monitoring device in the
resident's room in a nursing home.

(2) The nursing home shall approve an application to install and use an
electronic monitoring device if the following conditions are met:

(A) The resident or resident's sponsor completes the form described in subsection (d) and submits it to the nursing home; and

(B) Unless a resident is eligible to receive financial assistance under subsection (f), the cost of the device and the cost of installing, maintaining, and removing the device, other than the cost of electricity for the device, is paid for by the resident or the resident's sponsor.

(3) A resident or sponsor who has authorized the installation and use of an electronic monitoring device may withdraw that authorization at any time.

(c)

(1) If a resident wishing to conduct authorized electronic monitoring of the resident's room lives with another resident in a nursing home, then the consent of the other resident or the other resident's sponsor to the installation and use of an electronic monitoring device in the room is required before any installation or use of the device may occur. The other resident or other resident's sponsor must consent by completing the relevant part of the form described in subsection (d).

(2)

(A) If a resident living in a room with another resident wishes to conduct authorized electronic monitoring of the resident's room, but the other resident or other resident's sponsor refuses to consent to the installation and use of an electronic monitoring device, then the nursing home shall make a reasonable attempt to accommodate the resident wishing to conduct authorized electronic monitoring by moving either resident to another available room.

(B) In the case of a resident living in a room with another resident, the other resident or other resident's sponsor may place conditions on any consent to the installation and use of an electronic monitoring device,

including conditions such as pointing the device away from the other resident's living space or limiting or prohibiting the use of certain devices.

If conditions are placed on consent, then the device must be installed and used in compliance with those conditions.

(3) A resident whose consent is required under this section may withdraw that consent at any time.

(d) The department of health shall promulgate and make publicly available a form for use by a resident or resident's sponsor seeking to authorize the installation and use of an electronic monitoring device in the resident's room in a nursing home. The form must include the following:

(1) An explanation of this section;

(2) An acknowledgment that the resident or resident's sponsor has consented to the installation and use of the device in the resident's room;

(3) In the case of a resident who lives in a room with another resident, an acknowledgment that the other resident or other resident's sponsor has consented to the installation and use of the device and a description of any conditions placed on that consent pursuant to subdivision (c)(2)(B);

(4) A section for providing the nursing home with information regarding the type, function, and use of the device to be installed and used; and

(5) A section stating that the nursing home is released from liability in any civil or criminal action or administrative proceeding for a violation of the resident's right to privacy in connection with using the device.

(e) A nursing home shall post a notice in a conspicuous place at the entrance to a resident's room with an electronic monitoring device stating that an electronic monitoring device is in use in the room.

(f) The department of health shall, in coordination with TennCare, establish a program to assist residents of nursing homes who are eligible for medical assistance through the TennCare program with purchasing electronic monitoring devices. Eligible residents must apply to the department of health for assistance with purchasing and installing electronic monitoring devices in the manner prescribed by the department.

(g) Each nursing home shall submit to the department of health, on a date established by the department, an annual report detailing the number of authorized electronic monitoring devices that are in use in residents' rooms at the nursing home.

(h) A nursing home shall not discharge, deny admission to, or otherwise discriminate or retaliate against a resident or prospective resident because the resident or prospective resident authorized or attempted to authorize the installation and use of an electronic monitoring device in the resident's or prospective resident's room in the nursing home.

(i) No person other than the resident or resident's sponsor who authorized the installation and use of an electronic monitoring device in the resident's room in a nursing home shall intentionally obstruct, tamper with, or destroy the device or a recording made by the device.

(j)

(1) A violation of subsection (e) is a Class B misdemeanor, punishable only by a fine of up to five hundred (\$500) per each day that the violation occurs. Each violation constitutes a separate offense.

(2) A violation of subsection (h) is a Class B misdemeanor, punishable only by a fine of up to five hundred dollars (\$500). Each violation constitutes a separate offense.

(3) A violation of subsection (i) is a Class A misdemeanor and constitutes the offense of tampering with an electronic monitoring device. Each violation constitutes a separate offense.

(k)

(a) Compliance with this section is a complete defense to any civil or criminal action brought against the resident, the resident's sponsor, or the nursing home for the use of an electronic monitoring device as described in this section.

(b) A communication or other sound acquired by an electronic monitoring device installed under this section is not a violation of § 39-13-601.

(c) A nursing home is not civilly or criminally liable for the inadvertent or intentional disclosure of a recording by a resident or the resident's sponsor.

(d) A nursing home is not civilly or criminally liable for a violation of a resident's right to privacy arising out of any monitoring conducted pursuant to this section.

SECTION 2. For the purpose of promulgating rules and forms, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2020, the public welfare requiring it.